

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
PLACER,

Respondent,

TIBOR KARSAI,

Real Party in Interest.

Supreme Court Case
No. _____

Supreme Court Case
No. S201877

STAY REQUESTED

Third Appellate District, No. C070719
Placer County Superior Court No. SCV19296
The Honorable James D. Garbolino, Judge
Department Four – (916) 408-6000

PETITION FOR REVIEW

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Court of Appeal
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Superior Court
No. SCV19296

STAY REQUESTED

Appeal from the Superior Court of Placer County
The Honorable James D. Garbolino, Judge
Department Four – (916) 408-6000

PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
CALIFORNIA SUPREME COURT:

The People of the State of California respectfully petition this
Honorable Court to grant review, pursuant to California Rules of Court,
rule 8.500, of the partially published decision of the California Court of

Appeal, Third Appellate District, filed on February 7, 2013. A copy of the appellate court's decision is attached to this petition. (Exh. A) This decision is important and review necessary to ensure community safety, as well as give the best chance of rehabilitation possible to adjudicated sexually violent predators. There are over 800 sexually violent predators that this decision would potentially permit to be released back into communities as transient sex offenders.

STAY REQUEST

A stay pursuant to California Rules of Court, Rule 8.486(a)(7), is requested of the order from the Placer County Superior Court to release Tibor Karsai (Karsai) into Santa Barbara County as a "transient." Stays were previously granted in this case, but the Court of Appeal vacated the stay with its decision. Therefore, a stay is necessary and urgent because the release of Karsai as a "transient" is imminent and will endanger the community, as he will have no identified permanent residence. There are no scheduled court hearing dates in the Placer County Superior Court.

ISSUE PRESENTED

Whether Welfare and Institutions Code § 6608.5 or any other provision of law permits the release of an adjudicated sexually violent

predator as a “transient” without any housing being secured by the California Conditional Release Program?

STATEMENT OF THE CASE

Karsai has been in treatment in the state-run program for nearly twelve years as an adjudicated sexually violent predator (SVP).

In October 1974, Karsai was convicted of raping a 17-year-old female victim at knife-point and was committed to state prison. Karsai was paroled on March 28, 1979, and took up residence in San Luis Obispo County. On February 18, 1980, Karsai was arrested for rape and sexual assault of a minor in Placer County. On June 5, 1980, Karsai was sentenced to 26 years in state prison.

Karsai was first committed as an SVP on July 8, 1998. As a result of a series of re-commitment proceedings, Karsai continued in the SVP program until October 29, 2010, when the court found, pursuant to Welfare & Institutions Code §6608(d), that Karsai would “not be a danger to others” in that it was not likely that he would engage in sexually violent criminal behavior if he was under supervision and treatment in the community.

Pursuant to Welfare & Institutions Code §6608(f), the Placer County Superior Court ordered that the California Conditional Release Program (CONREP) community program director make the necessary placement

arrangements and ordered that Karsai be placed in the community in accordance with the treatment and supervision plan.

On July 22, 2011, the District Attorney of Santa Barbara County objected to a determination of Santa Barbara County as the domicile for purposes of community placement of Karsai. However, the court determined that Santa Barbara County was the proper domicile for placement.

On September 15, 2011, the court ordered that Liberty Healthcare, a service provider for CONREP, provide an update on placement efforts and requested that the parties provide the court with briefing on the issues that could constrain a placement in Karsai's mother's home in Santa Maria, Santa Barbara County.

On October 25, 2011, a hearing was held for the purpose of determining an appropriate placement for Karsai. A report from Liberty Healthcare documented that Liberty Healthcare had expanded its search for residences in Santa Barbara County, and the contiguous counties of Ventura and San Luis Obispo. This search yielded only one potential property, that belonging to Karsai's mother, and the court ordered the placement in that residence.

On November 21, 2011, CONREP notified the parties that this placement failed to come to fruition due to the extensive amount of

publicity, and the harassment of Karsai's family. Liberty Healthcare continued the search to obtain a suitable placement location for Karsai.

On December 7, 2011, the court found extraordinary circumstances existed within the meaning of Welfare & Institutions Code §6608.5(a), justifying a search for "any" available placements without being constrained to San Luis Obispo or Santa Barbara Counties.

On February 21, 2012, Liberty Healthcare located two residences; one in Sacramento County, and one in Placer County, which were suitable placement for Karsai. However, the Placer County Superior Court did not approve either location.

Without notice or hearing, on March 27, 2012, the Respondent court ordered that Karsai be released by April 16, 2012, as a "transient" in Santa Barbara County. On April 2, 2012, Petitioner filed a Writ of Mandate and Stay with the Court of Appeal. On April 4, 2012, the Court of Appeal granted a temporary stay of the release of Karsai. After submission of an opposition brief, the Court of Appeal vacated the stay and summarily denied Petitioner's writ.

Petitioner filed a Petition for Review with this Court. The Petition for Review was granted on May 16, 2012. The case was remanded with instructions to issue an Order to Show Cause why the relief sought should not be granted. The Court of Appeal issued an Order to Show Cause on

May 18, 2012. The Court of Appeal heard oral argument on January 23, 2013. On February 7, 2013, the Court of Appeal denied the petition.

Petitioner did not file a Petition for Rehearing, but rather has filed the instant Petition for Review.

REASONS FOR GRANTING THE PETITION

I. REVIEW SHOULD BE GRANTED BECAUSE THE COURT OF APPEAL DID NOT CORRECTLY APPLY THE BURDEN OF PROOF AS DIRECTED BY THIS COURT

On May 14, 2012, this Court granted the Petitioner's Petition for Review and remanded the case with instructions that the Court of Appeal direct the respondent court to show cause why the relief sought in the petition for writ of mandate should not be granted.

This Court's order thereby shifted the burden of proof from the Petitioner to the Respondent. However, throughout the decision, the Court of Appeal applied the burden to proof to the Petitioner. The Court of Appeal states, "[I]t is the burden of the petitioner seeking relief by way of prerogative writ to plead facts supporting the relief he seeks and to incorporate documentation filed in the trial court, to the extent necessary to understand the proceedings and justify relief..." (Exh. A at p. 18) The decision fails to state that the burden of proof was shifted to the Respondent or Real Party in Interest.

While the Court of Appeal did issue an Order to Show Cause, it did not shift the burden of proof to Respondent to “show cause why the relief sought in the petition for writ of mandate should not be granted.” Had the Court of Appeal applied the burden of proof correctly, the petition should have been granted, because Respondent was unable to meet the burden of proof.

Therefore, failure to follow this Court’s instructions warrants that the Petition for Review be granted.

II. THE PETITION SHOULD BE GRANTED TO SECURE UNIFORMITY OF DECISION AMONG TRIAL COURTS CONSIDERING THE CONDITIONAL RELEASE OF SEXUALLY VIOLENT PREDATORS INTO THE COMMUNITY

This is an issue of statewide importance and review is necessary to secure uniformity of decision. (Cal. Rules of Court, rule 8.500(b)(1).) The Court of Appeal erred as a matter of law in concluding that a “transient” release of an adjudicated sexually violent predator is authorized by Welfare & Institutions Code § 6600, et. al. and Penal Code § 3003.5. The Court of Appeal decision to release Karsai as a transient without a fixed permanent residence is not authorized by the Sexually Violent Predator Act (SVPA) or case law. Further, the opinion has grave policy implications, in that it places the community at higher risk of sexual recidivism by the offender. The decision also leaves Karsai in a position where he is likely to fail because he does not have proper support and living conditions.

The Court of Appeal decision states, “[w]e acknowledge that the SVPA does not expressly authorize the conditional release of an SVP into an outpatient program without a fixed residential address. At the same time, however, there is nothing in the SVPA that expressly requires an SVP to have a fixed residential address before he or she can be conditionally released.” (Exh. A at p. 10) The Court of Appeal decision is inconsistent with the purpose of conditional release—which is to place conditions on the release which will aid in the offender succeeding in community placement, and will protect the community at the same time.

Contrary to the Court of Appeal’s view, a fixed residence is required by statute before conditional release can occur—to protect both the community and the offender’s chances of rehabilitation. In fact, the words “placement,” “address,” or “residence/residential” are cited eight times in the statute. Welfare & Institutions Code § 6608.5(f), states, “a person released under this section shall not be placed within a one-quarter mile of any public or private school...”. Welfare & Institutions Code § 6608.8(e) states, “Notwithstanding any provision of this section, including, but not limited to, subdivision (d), matters concerning the residential placement, including any changes or proposed changes in the residence of the person, shall be considered and determined pursuant to Section 6609.1.” Welfare & Institutions Code § 6609, states, “within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of

Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment.” Welfare & Institutions Code § 6609.1(a)(5)(A), states, “the name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program.” Welfare & Institutions Code § 6609.1(b), states, “In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community.” Welfare & Institutions Code § 6609.1(c), states, “The agencies’ comments and department’s statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department’s recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department’s recommendation or proposal is not appropriate.”

Finally, SVPA requirements can be no more clear than the following provision of Welfare & Institutions Code 6608.5(d), “The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing

within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608.”

The Court of Appeal concluded that, “[i]ndeed, although various provisions in the SVPA contemplate that a ‘placement address’ will be proposed, commented on, and approved or rejected, **nothing** in the SVPA specifically provides that if a fixed address at which **the** released person is to reside is not identified and approved by the court, **the** person cannot be released at all.” (Exh. A at p. 12) This rationale **conflicts** with the plain language of the statute. The entire treatment and **supervisory** components of the SVPA are contingent upon the SVP being **housed** in a location that can be visited and monitored by CONREP and law enforcement.

This decision is at odds with the United States Attorney General’s position on homelessness and sex offender criminality. Attorney General Eric Holder stated, “research reveals that **gainful employment** and **stable housing** are key factors that enable people with **criminal** convictions to avoid future arrests and incarceration. I encourage **you** to evaluate the collateral consequences in your state - and to **determine** whether those that impose burdens on individuals convicted of crimes **without** increasing public safety should be eliminated. Public safety **requires** us to carefully tailor laws and policies to genuine risks while **reducing or** eliminating those that impede successful reentry without community **benefit.**” (*Letter to all state governors and Attorneys General, April 18, 2011*). Moreover, the

California Sex Offender Management Board (CASOMB) has concluded that “that the reality reflected by the high and still escalating rate of homelessness among registered sex offenders in California is the single greatest obstacle to the effective management of sex offenders in California.” (*Homelessness Among California’s Registered Sex Offenders* [hereinafter cited as “*CASOMB Homelessness report*”], September 2011, Report of the California Sex Offender Management Board, www.casomb.org/reports.)

Based on the statutory provisions of SVPA and the strong public policy reasons militating against transient release of an SVP, the Court of Appeal decision should be carefully reviewed by this Court because of the grave policy implications of this decision.

III. REVIEW SHOULD BE GRANTED BECAUSE THIS IS A RECURRING ISSUE OF GREAT IMPORTANCE TO PUBLIC SAFETY

Review should be granted because this issue is going to recur in many cases involving conditional release of an adjudicated sexually violent predator.

As of December 2012, there were 7,168 sex offenders on active parole in the state. Of that number, 1,925 were transient, meaning that 27% of all sex offenders on parole were homeless. (California Department of Corrections and Rehabilitation, Division of Adult Parole, report to Jan.

2013 meeting of the California Sex Offender Management Board, posted at www.casomb.org). It is likely that in many counties, not just Santa Barbara County, the supply of housing for sex offenders on parole is inadequate. (See *In re Taylor*, review granted, January 13, 2013, S206143).¹

Additionally, the state's residency restriction, Penal Code § 3003.5(b) (enacted by ballot initiative in 2006 as Proposition 83, Jessica's Law) restricts the availability of appropriate housing for all parolee sex offenders, and the constitutionality of that statute, as applied, is pending in this Court in *In re Taylor*, review granted, January 13, 2013, S206143.

The importance of housing as a prerequisite to obtaining employment, access to mental health and other public services, and aiding in the avoidance of substance abuse, cannot be overstated. (CASOMB *Homelessness Report*, supra at pp. 14, et seq.) Conversely, the rise in homelessness among registered sex offenders is closely associated with an increased risk to community safety. (*Id.*)

In fact, “[h]ousing is the linchpin that holds the reintegration process together.” (*Id.*, citing Petersilia, *When Prisoners Come Home*, 2003.) It is

¹ The issue in *Taylor* was stated by this Court as follows: “Does the residency restriction of Penal Code section 3003.5, subdivision (b), when enforced as a mandatory parole condition against registered sex offenders paroled to San Diego County, constitute an unreasonable statutory parole condition that infringes on their constitutional rights? (See *In re E.J.* (2010) 47 Cal.4th 1258, 1282, fn. 10 [104 Cal. Rptr. 3d 165, 223 P.3d 31].)”

universally acknowledged that adjudicated sexually violent predators are exceedingly high risk sex offenders. In California, risk of re-offense is measured by use of the Static-99R, a static risk assessment instrument, and by use of both dynamic and violence risk tools during parole or probation. (See Pen. Code, §§ 290.03-290.09.) Although sexual recidivism rates are often over-stated, the truth is that most sexual reoffending which does occur is committed by those offenders who are found, based on evidence-based risk assessment tools, to be at high risk of sexual re-offense. An adjudicated sexually violent predator is ipso facto a high risk sex offender and is far more likely to commit a new sexual offense than a low, or low-moderate, risk offender.²

Policy concerns support the clear legislative mandate that adjudicated sexually violent predators must have stable housing as a condition of being conditionally released back into the community. The California Legislature should be presumed to have understood these well-known criminological facts when it required such offenders to be released to a residence address, and not as a transient living in a tent or under an underpass.

² The highest base rates (of sexual recidivism) were found to be in samples involving preselected high risk offenders, whereas the lowest sexual recidivism rates were observed in routine samples of sex offenders (not selected for the sample due to level of risk). (Helmus, Hanson, et al., *Absolute Recidivism Rates Predicted by Static-99R and Static-2002R Sex Offender Risk Assessment Tools Vary Across Samples*, 39 Criminal Justice and Behavior 1148, 1164 (May 2012).)

IV. REVIEW SHOULD BE GRANTED BECAUSE THE COURT OF APPEAL DECISION IS INCONSISTENT WITH THE CLEAR INTENT OF THE STATUTE

The Court of Appeal's order supporting the lower court's determination, conflicts with the plain statutory provisions of the SVPA.

Even the lower court acknowledged the danger of such an order as follows:

Placement as a transient does little to serve the interests of public safety. Were there to be a suitable placement for Mr. Karsai within the community, both citizens and law enforcement would know of his location. Law enforcement would be able to more easily monitor Mr. Karsai's movements within the community. Citizens would know where Mr. Karsai was placed, and choose whether to avoid the area if that was their preference... As a result, it is likely that his potential for program failure is greatly increased. (Exh. B at p. 5)

The Court of Appeal decision disregarded the tenets of statutory construction and created a "transient release" provision that does not exist in the statutory scheme for conditional release of adjudicated sexually violent predators. "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. . . . [W]e do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]" (*People v. Pieters (1991)* 52 Cal.3d 894, 898-899.) Most importantly, for

the purposes of this case, “courts are ‘exceedingly reluctant to attach an interpretation to a particular statute which renders other existing provisions unnecessary.’ [Citation.]” (*People v. Olsen* (1984) 36 Cal.3d 638, 647.)

The plain language of the statute leaves no room for the interpretation that release as a transient sex offender was contemplated. Welfare & Institutions Code section 6608.5(a), authorizes the court to place an SVP in a residence outside of the county of domicile based on “extraordinary circumstances.” If transient release were authorized under the statute, there would be little need to consider release into other counties.

In other words, the Court of Appeal decision allows a lower court to create its own statutory provision as long as there is no specific language to the contrary in the statute. Clearly, this type of judicial legislation bypasses the separation of powers provision of the Constitution. The Court of Appeal attempts to suggest that the “extraordinary circumstances” provision of Welfare & Institutions Code § 6608.5 (c) is not triggered by a failure to locate a residence, but may be triggered by other circumstances. In this vein, the Court of Appeals held, “[i]t could be that circumstances in a particular county of domicile might prevent the SVP from receiving adequate outpatient treatment or supervision, such that it would be necessary to place the SVP in another county where adequate treatment and/or supervision would be available. Such circumstances, however, do not necessarily have to have anything to do with whether a specific

residence has been secured for the SVP before his or her release.” (Exh. A at p. 13).

The Court of Appeal concluded, “[i]ndeed, there is nothing on the face of the SVPA that would prevent a court from finding that despite the lack of a specific residence, the department can nonetheless effect conditional release into the county of domicile without any inordinate limitation.” (Exh. A at p. 13). This statement is unsupported by the plain language of the statute, and hobbles the very purpose of the SVPA, which is to protect the community from sexual recidivism by high risk sex offenders. In other words, the Court of Appeal apparently believed that despite not having a residence, CONREP could still provide appropriate other services and protect the community. Aside from the lack of any practical considerations, such as how Karsai will be able to charge his GPS bracelet at night, this concept provides no measure of security for the residents of the community.

The citizens of the community have a right to know where an SVP resides, in order to protect themselves and their children. However, a registered sex offender who is a transient will not have an address which can be disclosed to the public. Further, they cannot be readily located in an investigation into a new sex crime in the area that fits the description of their prior offenses—because their whereabouts will be unknown even to the registering law enforcement agency. Yet the main purpose of sex

offender registration, as this Court has observed, is to locate certain registered sex offenders, when new offenses are committed by an unidentified perpetrator:

The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. [Citations.] Plainly, the Legislature perceives that sex offenders pose a ‘continuing threat to society’ [citation] and require constant vigilance. [Citation.] (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527 (*Wright*); see *People v. Barker* (2004) 34 Cal.4th 345, 357.)

Unfortunately, the answer to the whereabouts of a conditionally released SVP, under the Court of Appeal’s decision, will be “anywhere,” or perhaps “unknown” is more accurate.³

³ It is notable that another Court of Appeal disagreed with the statutory interpretation of the Third District in this case, albeit in a different procedural context. In *People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, the court held that an SVP cannot be released under such conditions as in this case. The People acknowledge that the procedural posture in the case at bar is different than in *George*. However, the general premise that an SVP could not be released as “transient” despite the inability to locate a residence in his county of domicile supports Petitioner’s position. The court said in *George*, “[W]e do not believe that the remedy is to abrogate the protective scheme of the SVPA by discharging him unconditionally if the evidence proves that without supervision he will remain a danger to the public.” (*George, supra*, 164 Cal.App.4th at p. 198.) The Third District Court of Appeal’s suggestion that the holding in *George* is limited to its facts is incorrect. The rationale and logic behind *George* applies to the present case.

V. REVIEW SHOULD BE GRANTED BECAUSE THERE IS A WAY TO COMPLY WITH THE CLEAR LANGUAGE AND INTENT OF THE SVPA, BY PROVIDING FOR A RESIDENCE IN A DIFFERENT COUNTY

There is no reason to conclude that a residence is unavailable to Karsai. Liberty Healthcare has not declared in that there is no placement available. To the contrary, Liberty Healthcare quite swiftly located two residences, one in Sacramento County, and one in Placer County, that were suitable placement for Karsai, and which they found to be appropriate, approximately 60 days after starting the state-wide search. The trial court allowed only 35 days, an unreasonably short period of time to find a suitable placement for such a high risk offender. Liberty Healthcare was still in the process of locating placement, before the trial court determined that Karsai should be released into the community as a transient.

Thus, Petitioner submits that it was unreasonable to end the search for placement on March 29, 2012, considering that two appropriate residence locations were identified approximately a month before the Placer County trial court's decision. The point is that Liberty Healthcare has not exhausted all of its resources, and reasonable efforts can still be made to locate a residence that is in compliance with state and local laws. The premature decision to release an SVP as a transient does not serve justice to any of the parties involved in this matter. The fact remains that a suitable residence was not found to be available in Santa Barbara County.

Therefore, more counties and more locations should **have** been considered by Liberty Healthcare, and the trial court—for the sake of both the community, and Karsai.

In the future, it is likely that there will be no **incentive** for the state to spend money attempting to locate housing any longer, **if** transient release of adjudicated sexually violent predators is **authorized** for purposes of conditional release.

CONCLUSION

The conditional release of Karsai into Santa **Barbara** County as a transient sex offender, without housing as **statutorily mandated**, was an abuse of discretion.⁴ The release is not authorized **under** the Welfare & Institutions Code and it endangers the public. The **petition** for review should be granted, and a stay should issue **precluding placement** of Karsai in the community without the appropriate housing that **is** required by both the SVPA and overriding policy considerations which **underlie** that very Act. Petitioner requests that Karsai not be **released** until a suitable

⁴ The Third District Court of Appeal incorrectly **stated** that Petitioner did not argue that the decision to place Karsai in the **community as** a transient was an abuse of discretion. However, Petitioner's traverse **clearly** raised the issue of abuse of discretion. (Exh. C, Traverse, at p. 11.)

placement location that conforms to the Welfare and Institutions Code is determined.

For the foregoing reasons, Petitioner respectfully requests that this Petition for Review be granted.

Dated: February 15, 2013

Respectfully submitted,

JOYCE E. DUDLEY
District Attorney of Santa Barbara

A handwritten signature in black ink, appearing to read 'M. J. Carrozzo', written over a horizontal line.

MICHAEL J. CARROZZO
Deputy District Attorney
Attorneys for Petitioner

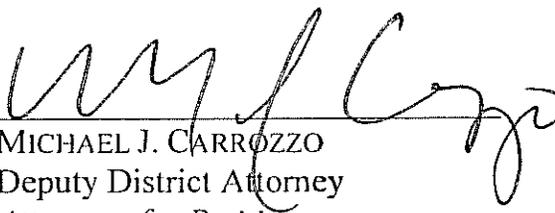
CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13 point
“Times New Roman” font and contains 4,713 words.

Dated: February 15, 2013

Respectfully submitted,

JOYCE E. DUDLEY
District Attorney of Santa Barbara


MICHAEL J. CARROZZO
Deputy District Attorney
Attorneys for Petitioner

PROOF OF SERVICE

STATE OF CALIFORNIA)	PEOPLE OF THE STATE
)	OF CALIFORNIA,
COUNTY OF SANTA BARBARA) ss.	v.
_____)	Placer Superior Ct. Case No.
		C070719

I am a citizen of the United States and a resident of Santa Barbara County, California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is the Office of the District Attorney, 1112 Santa Barbara Street, Santa Barbara, CA 93101, telephone: (805) 568-2300.

On FEBRUARY 15, 2013, I served a true copy of the attached Informal **Petition for Review** on the following, by method(s) indicated below:

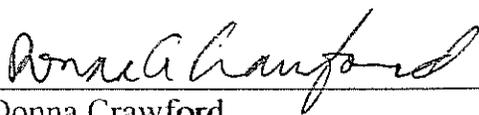
- BY PERSONAL SERVICE:** By hand delivering a true copy thereof, at his office with his clerk therein or the person having charge thereof, at the address indicated below:
- BY FIRST CLASS MAIL:** By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the U.S. Post Office Box addressed as indicated below:

SEE ATTACHED SERVICE LIST

- BY FACSIMILE TRANSMISSION:** By faxing a true copy thereof to the recipient at the facsimile number indicated below:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Santa Barbara, California.

FEBRUARY 15, 2013



 Donna Crawford

SERVICE LIST

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Court of Appeal
Third Appellate District
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EXHIBIT

A

CERTIFIED FOR PARTIAL PUBLICATION*

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF PLACER COUNTY,

Respondent;

TIBOR KARSAI,

Real Party in Interest.

FILED

FEB - 7 2013

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

By _____ Deputy

C070719

(Super. Ct. No. SCV19296)

ORIGINAL PROCEEDINGS in mandate. James D. Garbolino, Judge. Petition denied.

Joyce E. Dudley, District Attorney, Michael J. Carozzo, Deputy District Attorney, for Petitioner.

Jonathan Richter, Chief Defense Attorney, Kenneth Hahus, Assistant Public Defender, for Respondent.

* Pursuant to California Rules of Court, rules 8.1105 and 8.1110, this opinion is certified for publication with the exception of parts III and IV of the Discussion.

No appearance for Real Party in Interest.

R. Scott Owens, District Attorney, Jeffrey R. Wood and Andrew Todd Kuhnen, Deputies District Attorney, Amici Curiae on behalf of Respondent and Real Party in Interest.

The Sexually Violent Predator Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.)¹ provides that, under certain circumstances, a person who has been committed as a sexually violent predator (SVP) can be conditionally released into the community under a program of outpatient supervision and treatment. (See § 6608-6609.3.) In October 2010, the Placer Superior Court determined that the real party in interest in this proceeding, Tibor Karsai, who has been committed as an SVP since 1998, should be conditionally released. A year and one-half later, after an exhaustive but ultimately unsuccessful search for an acceptable residence for Karsai, the superior court ordered that Karsai was to be conditionally released into Santa Barbara County without a fixed residence, i.e., as a transient.

In this mandamus proceeding, the District Attorney for Santa Barbara County (Santa Barbara) seeks a writ of mandate to prevent Karsai's release without a fixed residence, contending "there is no provision [of law] whatsoever that allows an SVP to be released as a transient." Santa Barbara also contends the superior court erred in determining that Santa Barbara County was Karsai's county of domicile immediately before the incarceration that preceded his commitment as an SVP, and Santa Barbara

¹ The SVPA was amended effective June 27, 2012 -- after the commencement of this proceeding -- to reflect the change of the State Department of Mental Health to the State Department of State Hospitals and the change of the director of mental health to the director of state hospitals. (Stats. 2012, ch. 24, chs. 63, 66.) Because this change is not substantive, we will cite the current versions of the statutes in this opinion. Also, we will refer to the State Department of State Hospitals as the department, and all further section references are to the Welfare and Institutions Code unless otherwise noted.

argues that the superior court failed to comply with statutory notice requirements before ordering Karsai's release.

In the published portion of our opinion, we conclude there is nothing in the SVPA that precludes a court from ordering the conditional release of a person committed as an SVP even though no fixed residence has been located for the person before his release. We do not decide whether it was an abuse of discretion to release Karsai under the facts of this case because that question is not before us. Instead, we decide only what we are called upon to decide by Santa Barbara's writ petition, namely, that conditional release as a transient is not prohibited by the SVPA.

Given this conclusion, it bears noting that the provisions of the SVPA, and the conditional release program under the SVPA, have been carefully designed to protect the public regardless of whether a person on conditional release has a fixed residence at the time of release. Under the provisions of the SVPA, a person committed as an SVP can be conditionally released *only* upon a determination by a court of law that the person will pose *no danger* to others if under outpatient supervision and treatment in the community. That means that in every case in which conditional release is permitted, it has been determined that the person released into the community *will not be* a sexually violent predator when provided with proper supervision and treatment. Moreover, whether the person released into the community has a fixed residence, the conditional release program involves "an intensive regimen of treatment and supervision" that includes "at least weekly individual contact, weekly group treatment, [and] weekly drug screening" and that *can* include "surveillance, polygraph examinations, anti-androgen therapy, Global Positioning System [tracking], increased supervision through random visits and

Penal Code [section] 290 . . . community notification.”² Thus, even a transient participating in the conditional release program will be under **near constant** supervision.

It also bears noting that at any given time the number of **persons** conditionally released into the community following a commitment as a **sexually violent predator** is actually quite small. As of July 2011, only 717 persons had been committed as sexually violent predators since the advent of the commitment program in 1996. (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 760 (2011-2012 Reg. Sess.) as amended Aug. 6, 2012.) Of this number, only *eight* were in the **conditional** release program as of May 2011. (Cal. State Auditor, Sex Offender Commitment Program (July 2011) p. 9.)

In the unpublished portion of our opinion, we reject Santa Barbara’s challenge to the superior court’s determination of Karsai’s county of domicile, as well as Santa Barbara’s notice argument. Accordingly, we will deny Santa Barbara’s writ petition and dissolve the stay of the order releasing Karsai as a transient into **an outpatient** program in Santa Barbara County.

FACTUAL AND PROCEDURAL BACKGROUND

Karsai was committed as an SVP in 1998. In October 2010, the superior court found (pursuant to subdivision (d) of section 6608) that Karsai **would** not be a danger to the health and safety of others in that it was not likely that he **would** engage in sexually violent criminal behavior due to his diagnosed mental disorder **if under** supervision and treatment in the community. Based on this finding, the court **ordered** Karsai placed with an appropriate forensic conditional release program. (§ 6608, **subd. (d).**)

Between December 2010 and July 2011, the court reviewed the status of Karsai’s proposed placement in the community five times. At some **point during** that period, prior

² The foregoing information can be found on the department’s official Web site in its description of the “Conditional Release Program (CONREP)” that serves sexually violent predators. (See <http://www.dsh.ca.gov/Forensics/FAQs.asp>.)

to the middle of May 2011, the court apparently determined that Santa Barbara County was Karsai's county of domicile.³ On May 17, 2011, the department gave official notice that it was recommending to the court that Karsai be placed at an address in Santa Barbara County (his mother's home). Santa Barbara opposed the proposed placement and moved for reconsideration of the determination of domicile in Santa Barbara County, arguing that the county of domicile was instead San Luis Obispo County. The San Luis Obispo District Attorney appeared and argued that the court's initial determination of domicile in Santa Barbara County was correct.

On July 22, 2011, the court considered the domicile issue again and determined that Santa Barbara County was the proper domicile for purposes of conditionally releasing Karsai.

In September 2011, the court reviewed the status of Karsai's proposed placement once again, ordering that the court be given an update on placement efforts made by Liberty Healthcare (manager of the California Conditional Release Program) and requesting that the parties provide the court with briefing on the issues that could constrain a placement in Karsai's mother's home in Santa Maria. Thereafter, on October 25, 2011, the matter came on for hearing. Liberty reported that its staff had traveled 6,793 miles in a year of searching for a residence for Karsai and had viewed 1,261 properties in Santa Barbara, Ventura, and San Luis Obispo Counties. The only potential residence Liberty had found was Karsai's mother's home in Santa Maria. At the end of that hearing, the court ordered Liberty to place Karsai at that location pending further

³ The record is sparse on this part of the proceedings, but Karsai included as an exhibit to his opposition to the petition and his return to the order to show cause a motion signed by the Santa Barbara District Attorney's Office on June 9, 2011, for a hearing on June 16 seeking "reconsideration" of the superior court's finding of domicile in Santa Barbara County. Karsai also included a notice from the department dated May 17, 2011, that showed the county of domicile as Santa Barbara. Thus, the initial determination of domicile must have occurred before mid-May.

order of the court and set a hearing for December to hear further comment before issuing a final order.

In an order shortly following the October 2011 hearing, the court determined that Karsai's mother's home was not disqualified as a potential residence for Karsai despite its proximity to a park and an elementary school. In November 2011, however, Liberty informed the court that Karsai's family had withdrawn his mother's home as a placement/residence site because the family had been beset by the local media. Liberty asked the court if it should continue the housing search elsewhere. Following the hearing in December, the court found that extraordinary circumstances existed within the meaning of section 6608.5, subdivision (a), justifying a search for " 'any' " available placement "without being constrained to San Luis Obispo or Santa Barbara County."

In February 2012, Liberty reported that it had now reviewed more than 1,830 sites and had identified two possible locations: an apartment in Sacramento and a small home in Auburn. At a hearing that same month, the People (presumably represented by the Placer County District Attorney's Office) and Karsai both objected to placement at either of those locations. The People objected because of the proximity to one of Karsai's victims, and both sides objected "on the basis that the placements would provide no support structure for Mr. Karsai." Agreeing that it would be "fruitless" to pursue those placements, the court ordered Liberty to check into the option of placing Karsai in a travel trailer on a pad next to the San Luis Obispo Sheriff's Department. A review date was set for March 19, 2012.

A week before the review hearing, Liberty informed the court there were objections to placement in the trailer and that the pad was "not Jessica Law compliant." At the March hearing, the court concluded that "[t]he statutory scheme for placement of persons to be placed on conditional release from [the] SVP program is simply not working." Noting that "the SVP statutory scheme contemplates that the [department] or its designee makes the decision regarding proposed placement options," the court

determined that it did not have the authority to “compel the housing of Mr. Karsai at some public institution,” “order that the [d]epartment . . . purchase property that meets the needs of Mr. Karsai for a residence,” or “order the State of California to make available suitable housing within vacant or closed state facilities.” Because it appeared to the court that “there is no suitable placement available either in Mr. Karsai’s county of domicile, or elsewhere,” the court ordered that Karsai be “released in Santa Barbara County as a transient.” The court also ordered Liberty to “design a program to assist Mr. Karsai to obtain shelter, provide program support, and to return for a placement review” in April. The court ordered Karsai released by April 16 and ordered that local authorities were to be notified of the intended placement.

A week later, on March 27, the department notified authorities in Santa Barbara County of the intended placement of Karsai in the county as a transient. On March 29, 2012, for some unexplained reason, the superior court issued its order releasing Karsai as a transient a second time.

On April 2, 2012, Santa Barbara commenced this proceeding by filing a petition for a writ of mandate in this court, seeking a writ directing the superior court to vacate its order releasing Karsai into Santa Barbara County as a transient. Santa Barbara argued that the superior court had erred in finding Santa Barbara County was Karsai’s county of domicile, that there is no statutory authority for a transient release of an SVP, and that the court failed to give proper notice of its intent to release Karsai as a transient in the county.

On April 4, 2012, this court stayed the March 29 order releasing Karsai pending the filing of an opposition and further order of the court. On April 18, following Karsai’s filing of his opposition, this court denied Santa Barbara’s petition and lifted the stay. On April 20, Santa Barbara filed a petition for review in the Supreme Court. On April 23, the Supreme Court stayed both the March 19 order and the March 29 order to permit consideration of the petition for review. On May 16, the Supreme Court granted the

petition and transferred the matter back to this court with directions to vacate the order denying mandate and to issue an order directing the superior court to show cause why the relief sought in the petition for writ of mandate should not be granted. On May 18, 2012, we complied with the Supreme Court's order and continued the Supreme Court's stay in effect pending further order. Karsai subsequently filed a return to the order to show cause, and Santa Barbara filed a traverse.

DISCUSSION

I

The SVPA

The SVPA "allows for the involuntary commitment of certain convicted sex offenders, whose diagnosed mental disorders make them likely to reoffend if released at the end of their prison terms." (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 235.) By definition, an SVP is "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1).) The SVPA "is designed to accomplish the dual goals of protecting the public, by confining [violent] sexual offenders likely to reoffend, and providing treatment to those offenders." (*People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, 193.) "Those committed pursuant to the SVPA are to be treated 'not as criminals, but as sick persons.' (§ 6250.) They are to receive treatment for their disorders and must be released when they no longer constitute a threat to society." (*Ibid.*)

"A person may be committed as an SVP only if he or she is 'substantially dangerous without appropriate "treatment and custody." ' " (*People v. Superior Court (George)*, *supra*, 164 Cal.App.4th at p. 194, italics omitted.) "The SVPA requires that the first year of treatment occur within a confined facility (§ 6608, subd. (c)) but treatment thereafter may be in an outpatient program if conditions can be imposed that

adequately protect the community. (§ 6605, subs. (a), (b).)” (*George*, at p. 195.) If the court determines that an SVP “would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment.” (§ 6608, subd. (d).)

Once the court has determined that an SVP should be placed in a conditional release program, the community program director must “make the necessary placement arrangements, and within 30 days after receiving notice of the court’s finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.” (§ 6608, subd. (f).)

An SVP conditionally released for outpatient supervision and treatment “shall be placed in the county of domicile of the person prior to the person’s incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.” (§ 6608.5, subd. (a).) The county of domicile is “the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver’s license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person’s name and address, or information contained in an arrest record, probation officer’s report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.” (*Id.*, subd. (b)(1).) “[E]xtraordinary circumstances’ means circumstances that would

inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code." (§ 6608.5, subd. (c).)

With the foregoing provisions in mind, we turn to the arguments made in this proceeding.

11

Conditional Release Of An SVP As A Transient

In seeking to overturn the superior court's decision here, Santa Barbara contends "there is no provision whatsoever that allows an SVP to be released as a transient." We acknowledge that the SVPA does not expressly authorize the conditional release of an SVP into an outpatient program without a fixed residential address. At the same time, however, there is nothing in the SVPA that expressly requires an SVP to have a fixed residential address before he or she can be conditionally released.

In some places, the SVPA speaks generally in terms of placing a conditionally released SVP "under supervision and treatment in the community" (§ 6608, subd. (a)) and placing the conditionally released SVP "in the county of . . . domicile . . . prior to the person's incarceration" (except in extraordinary circumstances) (§ 6608.5, subd. (a)). In other places, the SVPA contemplates that the conditional release process will involve a specific residential address. For example, once the county of domicile has been determined, that county is supposed to "designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608." (§ 6608.5, subd. (d).) The SVPA also provides that certain conditionally released SVPs "shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive." (*Id.*, subd. (f).) Additionally, a notice the department is required to

give at certain times in the process must include the “proposed placement address.” (§ 6609.1, subd. (a)(5)(A).) Agencies receiving such a notice can comment on the “placement” or “location” of release (among other things), and “a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community.” (*Id.*, subd. (b).) Based on any agency comments and the department’s response to those comments, the court may “approve, modify, or reject the department’s recommendation or proposal regarding the community or specific address to which the person is scheduled to be released.” (*Id.*, subd. (c).)

Karsai argues that this latter statute, “by use of the conjunctive ‘or’ between ‘community’ and ‘specific address’ thus clearly contemplates that an SVP may be released with a ‘specific address’, i.e., as a non-transient, or may be released into the ‘community’, i.e., with no specific address in the community.” We disagree that this conclusion can be drawn from this particular statute. When notice is given under section 6609.1 of a “proposed placement address” for an SVP who is to be conditionally released, that proposed placement necessarily involves both the specific address and the community in which that address is located. Subdivision (c) of section 6609.1 then allows the court to “approve, modify, or reject the department’s recommendation or proposal regarding the community or specific address to which the person is scheduled to be released.” In other words, the court can approve, modify, or reject the recommended or proposed community, or the court can approve, modify, or reject the recommended or proposed specific address within that community. For example, the court could approve placement in a particular city, but reject the specific address proposed in that city. Or the court could reject placement in that city altogether, thus obviating any need to consider the specific address proposed. The point is that, contrary to Karsai’s assertion, subdivision (c) of section 6609.1 does not “clearly” contemplate release into a community as a transient without a fixed residential address. At the same time, however,

the statute does not expressly foreclose such a release. Indeed, although various provisions in the SVPA contemplate that a “placement address” will be proposed, commented on, and approved or rejected, nothing in the SVPA specifically provides that if a fixed address at which the released person is to reside is not identified and approved by the court, the person cannot be released at all.

Santa Barbara argues that because an agency in the county of domicile is supposed to “provide assistance and consultation in the process of locating and securing housing” for a person about to be conditionally released (§ 6608.5, subd. (d)), “there is no ambiguity in the statute” and “[t]he plain language of the statute requires release only when housing is ‘secured.’” Not so. Certainly the statute contemplates a process of locating and securing housing, but neither this provision nor any other expressly requires that an SVP who has been found to qualify for conditional release must nonetheless remain in custody until specific housing is actually secured.

Santa Barbara contends “a clear indication that transient release is not authorized under the statute is provided in [section] 6608.5[, subdivision] (a),” when read in conjunction with subdivision (d) of that statute. Under subdivision (a), a conditionally released SVP must be placed in the county of domicile unless the court finds that extraordinary circumstances require placement in another county. Under subdivision (d) (as just discussed), an agency in the county of domicile is supposed to provide assistance and consultation in the process of locating and securing housing. In Santa Barbara’s view, the inability to secure that housing must be one of the extraordinary circumstances that can require placement in another county. Under this view, however, “[i]f transient release were authorized under the statute, there would be no need to consider release into other counties.”

We find this argument without merit because of Santa Barbara’s unwarranted presumption that the inability to secure specific housing in the county of domicile is *necessarily* an extraordinary circumstance that requires placement in another county

under section 6608.5. As we have seen, under the SVPA “ ‘extraordinary circumstances’ means circumstances that would inordinately limit the department’s ability to effect conditional release of the person in the county of domicile” (§ 6608.5, subd. (c).) In other words, an SVP can be placed in a county other than the county of domicile only if the superior court finds that the department’s ability to conditionally release the SVP in the county of domicile is unreasonably limited by circumstances. What those circumstances might be, the statute does not say. It could be that circumstances in a particular county of domicile might prevent the SVP from receiving adequate outpatient treatment or supervision, such that it would be necessary to place the SVP in another county where adequate treatment and/or supervision would be available. Such circumstances, however, do not necessarily have to have anything to do with whether a specific residence has been secured for the SVP before his or her release. Indeed, there is nothing on the face of the SVPA that would prevent a court from finding that despite the lack of a specific residence, the department can nonetheless effect conditional release into the county of domicile without any inordinate limitation. What constitutes an inordinate limitation on the department’s ability to conditionally release the SVP (and thus extraordinary circumstances within the meaning of the SVPA) is for the court to decide, and if the court finds no such limitation, then release into the county of domicile is mandatory, even if no specific residence has been secured.

Of course, this does not mean that a court in a particular case could not find that the lack of a specific residence in the county of domicile qualified as extraordinary circumstances within the meaning of section 6608.5, thus requiring placement in another county. It just means that the lack of a specific residence in the county of domicile is not, *as a matter of law*, an extraordinary circumstance within the meaning of the statute. Thus, whether lack of specific residence requires placement in a county other than the county of domicile is something for the court to decide; it is not dictated by the SVPA.

Santa Barbara contends the court in *People v. Superior Court (George)*, *supra*, at page 183 “held that an SVP cannot be released” as a transient. According to Santa Barbara, in *George* “the court not only refused to release the SVP because no permanent residence was located, but also allowed the prosecutor to file a new petition” that “would have allowed the prosecution to present new evidence which could have resulted in the previous[ly] authorized conditional release be[ing] rescinded for an additional period of time.”

Santa Barbara’s interpretation of the decision in *George* is wrong. In *George*, the department “was unable over the course of a year to place George within San Francisco, the county of his domicile. When the department was about to seek court permission to place George in a conditional release program outside of San Francisco, his two-year commitment under the former provisions of the [SVPA] was about to expire[, which would have resulted in his unconditional release]. The district attorney filed a new petition to recommit George [indefinitely under the revised provisions of the SVPA].^{4]} In preparing to commence jury trial the issue arose whether, to establish George’s

⁴ “On September 20, 2006, the Governor signed the Sex Offender Punishment, Control, and Containment Act of 2006, Senate Bill No. 1128 (2005-2006 Reg. Sess.) (Senate Bill 1128). (Stats. 2006, ch. 337.) Senate Bill 1128 was urgency legislation that went into effect immediately. (Stats. 2006, ch. 37, § 62.) Among other things, it amended provisions of the SVPA to provide the initial commitment set forth in Welfare and Institutions Code section 6604 was for an indeterminate term. (Stats. 2006, ch. 337, § 55.)” (*Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1280.)

“At the November 7, 2006 General Election, the voters approved Proposition 83, an initiative measure. (See Deering’s Ann. Welf. & Inst. Code (2007 supp.) appen. foll. § 6604, p. 43.) Proposition 83 was known as ‘The Sexual Predator Punishment and Control Act: Jessica’s Law.’ (Voter Information Guide, Gen. Elec. (Nov. 7, 2006) text of Prop. 83, p. 127.) Among other things, Proposition 83 ‘requires that SVPs be committed by the court to a state mental hospital for an undetermined period of time rather than the renewable two-year commitment provided for under existing law.’ (Voter Information Guide, Gen. Elec. (Nov. 7, 2006) analysis of Prop. 83 by Legis. Analyst, p. 44.)” (*Bourquez v. Superior Court*, *supra*, 156 Cal.App.4th at p. 1281.)

continuing status as an SVP, it [wa]s necessary to prove that public safety require[d] his continued custody in a locked facility or whether it [wa]s sufficient to prove that public safety require[d] at least commitment to a supervised community placement. The trial court adopted the former view and, since the district attorney acknowledged that the evidence would not show that George require[d] continued confinement in a locked facility, dismissed the petition.” (*People v. Superior Court (George)*, *supra*, 164 Cal.App.4th at p. 188.)

Faced with the prospect of George’s unconditional release, despite evidence that he remained a danger to others if he were not in a supervised outpatient treatment program, the People sought review of the trial court’s decision via writ petition. (*People v. Superior Court (George)*, *supra*, 164 Cal.App.4th at pp. 183, 191-192.) The appellate court decided “that in order to recommit George as an SVP, it [wa]s sufficient to prove that public safety require[d] either his confinement in a secure facility or supervised community placement.” (*Id.* at p. 188.) Accordingly, the appellate court “reverse[d] the dismissal of the petition and remand[ed] for trial on the issue so defined.” (*Ibid.*)

From just the foregoing passages, it is apparent that Santa Barbara’s interpretation of *George* is wrong. At issue in *George* was a petition to recommit an SVP and the proper standard to be applied in adjudicating such a petition, under circumstances where the only choice was between unconditional release or conditional release into an outpatient program (given the People’s concession that the evidence would not show that George required continued confinement in a locked facility). The appellate court’s holding was that in determining whether George was still an SVP, the question to be answered was whether he would “constitute a danger to the public if not kept in custody in a secure facility or in a state-operated forensic conditional release program.” (*People v. Superior Court (George)*, *supra*, 164 Cal.App.4th at p. 198.) This has nothing to do with the question here, which is whether an SVP who already has been determined to qualify for conditional release -- and thus has already been determined to pose no “danger

to others due to his or her diagnosed mental disorder while under supervision and treatment in the community” (§ 6608, subd. (d)) -- can be released without a fixed residence or, instead, must remain confined until a residence is secured. Thus, *George* is entirely inapposite here.

Having exhausted Santa Barbara’s arguments regarding the proper interpretation of the SVPA, and having reviewed the law carefully ourselves, we are left with the conclusion that nothing in the law forbids conditional release of an SVP as a transient. Moreover, to imply such a limitation into the law would raise serious constitutional issues. “Because civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections.” (*People v. Otto* (2001) 26 Cal.4th 200, 209.) Once a court has determined that a particular SVP would not be a danger to the health and safety of others in that it is not likely that he or she would engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community, that person unquestionably has a significant liberty interest in being released. To authorize an unspecified delay in that release by implying in the SVPA a requirement that the person must have a specific residence before release, when under the statutory scheme the securing of a specific residence is not a prerequisite to a finding that the person would pose no danger to others if under outpatient supervision and treatment, would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person.⁵ To avoid such a

⁵ In this case, 16 months elapsed from October 2010, when the superior court found Karsai would not be a danger to others if under supervision and treatment in the community, until March 2012, when the court finally ordered his release as a transient. During that time, Liberty reviewed more than 1,830 properties as potential residences for

potential due process problem, we believe the more prudent course -- as well as that most consistent with the established canons of statutory interpretation⁶ -- is to not imply in the SVPA something the Legislature did not expressly include in it: the limitation that an SVP cannot be conditionally released in the community without a specific residence.⁷ Thus, we conclude the transient release the superior court ordered here was not legally impermissible, as Santa Barbara contends. Whether the order was within the superior court's discretion under the facts presented here is not before us.⁸ We simply conclude it was not legal error for the court to make the order it did.

III

Determination Of The County Of Domicile

In addition to its challenge to the concept of a transient release, Santa Barbara argues that the superior court here erred in determining that Santa Barbara County was Karsai's county of domicile. According to Santa Barbara, "[t]he record is completely

Karsai, to no avail. At this point, over two years have lapsed since the finding of nondangerousness and Karsai remains in a secure facility.

⁶ "In the construction of a statute . . . , the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted" (Code Civ. Proc., § 1858.)

⁷ It is worth noting that the Sex Offender Registration Act (Pen. Code, § 290 et seq.) specifically provides for offenders to register as transients.

⁸ In its writ petition, Santa Barbara specifically asserted on this point that the superior court committed legal error by ordering Karsai to be released as a transient because "there is no statutory authority to allow [Karsai] to be released as a transient" and "there is no provision whatsoever that allows an SVP to be released as a transient." Likewise, in its (successful) petition for review to the Supreme Court, Santa Barbara stated that the issue presented was "[w]hether Welfare and Institutions Code [section] 6608.5 or any other provision of law permits the release of an adjudicated sexually violent predator as a 'transient' without any placement being secured by the California Conditional Release Program." At no time in this proceeding has Santa Barbara argued that it was an abuse of discretion for the superior court to release Karsai as a transient under the particular facts of this case.

devoid of any evidence that demonstrates that [Karsai] was domiciled in Santa Barbara County.”

It has long been established that “[t]he question of residence or domicile is a mixed question of law and fact, and the determination of the trial court, upon conflicting evidence, is conclusive upon this court.” (*Estate of Peters* (1932) 124 Cal.App. 75, 77.) Thus, to overturn the superior court’s determination in this writ proceeding, Santa Barbara must persuade us that the evidence was not conflicting, and to do that Santa Barbara must, of course, first show us *what the evidence was on this point*.

In that initial step, Santa Barbara has utterly failed. “[I]t is the burden of the petitioner seeking relief by way of prerogative writ to plead facts supporting the relief he seeks and to incorporate documentation filed in the trial court ‘to the extent necessary to understand the proceedings and justify relief’” (*Krueger v. Superior Court* (1979) 89 Cal.App.3d 934, 938.) “A [writ] petition that seeks review of a trial court ruling must be accompanied by an adequate record, including copies of” “[t]he ruling from which the petitioner seeks relief,” “[a]ll documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position” and “[a]ny other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review.” (Cal. Rules of Court, rule 8.486(b)(1)(A)-(C).)⁹ “In exigent circumstances, the petition may be filed without the documents required by (1)(A)-(C) if counsel . . . files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.” (rule 8.486(b)(2).) “If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit

⁹ All further rule references are to the California Rules of Court.

them, the court may summarily deny a stay request, the petition, or both.”
(rule 8.486(b)(4).)

Here, Santa Barbara did not plead in its petition *any* facts relating to the superior court’s ruling that Santa Barbara County was Karsai’s county of domicile. In its memorandum of points and authorities in support of its petition, Santa Barbara purported to represent what the evidence before the court “demonstrated,” but the memorandum of points and authorities is not verified, as the petition must be. (E.g., rule 8.486(a)(4).) Furthermore, Santa Barbara did not submit any documents with its petition except the March 29 ruling and the department’s March 27 notice, let alone all of the documents required by rule 8.486(b)(1), nor did Santa Barbara file a declaration explaining any circumstances that made those documents unavailable and fairly summarizing their substance, as alternately required by rule 8.486(b)(2).

It is true Karsai supplied some of the missing documents as exhibits to his opposition to the petition and his return to the order to show cause (and from these we have patched together the statement of facts set forth above), but we have no reason to believe that the documents Karsai has supplied satisfy the requirements of rule 8.486(b)(1). With respect to the determination of his county of domicile, Karsai has provided us with only: (1) an unfiled copy of a motion by Santa Barbara for reconsideration of the finding of domicile in Santa Barbara County; (2) an unfiled copy of the San Luis Obispo District Attorney’s response to that motion; and (3) copies of two unfiled declarations in support of that response. We have no way of knowing whether (and seriously doubt that) these documents constitute all documents and exhibits submitted to the superior court on the question of Karsai’s county of domicile. Moreover, neither Santa Barbara nor Karsai has provided us with a copy of the order in which the superior court initially determined the county of domicile, before Santa Barbara moved for reconsideration, let alone the superior court’s ruling on that motion. The only record we have of the court’s determination of Karsai’s domicile is the court’s

own recitation in its order dated October 26, 2011 (which Karsai supplied as his exhibit A), later repeated in its orders of March 19 and 29, that “[o]n July 22, 2011, this court heard the objections from both the District Attorneys of Santa Barbara County and San Luis Obispo County regarding a determination of domicile for purposes of community placement of the Defendant. Santa Barbara County argued that San Luis Obispo County was the county of domicile, and San Luis Obispo argued that Santa Barbara was the defendant’s county of domicile. The court determined that Santa Barbara County was the proper domicile for placement of Mr. Karsai.”

In the absence of an adequate record of the superior court’s determination that Karsai’s county of domicile was Santa Barbara County, there is no way we can reasonably determine whether the evidence on that point was conflicting and therefore no way we can determine whether we are bound by the superior court’s determination. Stated another way, there is no way we can review the trial court’s domicile ruling consistent with the standard of review. Thus, Santa Barbara’s challenge to the superior court’s determination of Karsai’s county of domicile provides no basis for issuance of the writ Santa Barbara seeks.

IV

Statutory Notice Of Conditional Release

Santa Barbara’s final argument is that the superior court failed to comply with the statutory notice requirements contained in section 6609.1. This argument need not detain us long, because section 6609.1 does not impose any notice requirement applicable here on the court. Subdivision (a) of the statute provides that, when certain things happen -- like when the department makes a recommendation to the court that an SVP should be conditionally released -- the department must notify various agencies. Subdivision (d) also requires the department to give notice to other agencies in other circumstances. Only subdivision (e) of the statute imposes a notice requirement on the court, but that statute requires only that the court notify the “Sexually Violent Predator Parole

Coordinator of the Department of Corrections and Rehabilitation” if the court orders the release of an SVP.

Santa Barbara is not complaining here that the court failed to give notice to that official in this case. Instead, Santa Barbara complains that “[t]he lower court did not provide any notice to County of Santa Barbara officials that he was considering releasing [Karsai] as a ‘transient.’ ” Absent any statutory requirement that the court give such notice, however, this argument provides no basis for us to issue the writ Santa Barbara seeks.

DISPOSITION

The petition for a writ of mandate is denied. The stay of the March 19 and March 29 orders is dissolved.

ROBIE, J.

We concur:

BLEASE, Acting P.J.

DUARTE, J.

EXHIBIT

B

Superior Court, State of California
County of Placer

Date: March 29, 2012

Case No. SCV19296

Judge: Hon. James D. Garbolino

Clerk: O'Brien

People	Jeff Wood, D.D.A.
v.	
Tibor Karsai	Ken Hahus, Esq.

By The Court:

Calif. Welf. & Inst. Code §6608.5 requires the conditional release of a person adjudicated as a Sexually Violent Predator to the county of domicile. Section 6608 provides that a state-operated forensic conditional release program (in this case Liberty Healthcare) "shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the personal shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court." Section 6609.1 provides extensive measures regarding notice to persons and agencies of the proposed release, including the place where the person committed will be living.

Mr. Karsai has been in treatment in the state-run program for nearly twelve years. A history of this court's attempts to suitably place Mr. Karsai was set forth in its order of October 26, 2011. That order read in part:

Defendant was first committed as an SVP on July 8, 1998. As a result of a series of re-commitment proceedings, Defendant continued in the SVP program until October 29, 2010, when this court found, pursuant to Welf. & Inst. Code¹ §6608(d) that the Defendant would not be a danger to others in that it was not likely that he would engage in sexually violent criminal behavior if he was under the supervision and treatment in the community. Pursuant to §6608(f), this court ordered that the community program director make the necessary placement arrangements and ordered that Defendant be placed in the community on accordance with the treatment and supervision plan.

¹ Unless otherwise noted, all references herein are to the Welfare and Institutions Code

The status of the Defendant's proposed placement in the community was reviewed by this court on six occasions - December 17, 2010, January 28, 2011, April 18, 2011, June 20, 2011, July 22, 2011, September 15, 2011. On September 15, 2011, this court ordered that the court be given an update on placement efforts made by Liberty Healthcare, and requested that the parties provide the court with briefing on the issues that could constrain a placement in the Defendant's mother's home in Santa Maria, Santa Barbara County.

On July 22, 2011, this court heard the objections from both the District Attorneys of Santa Barbara County and San Luis Obispo County regarding a determination of domicile for purposes of community placement of the Defendant. Santa Barbara County argued that San Luis Obispo County was the county of domicile, and San Luis Obispo argued that Santa Barbara was the defendant's county of domicile. The court determined that Santa Barbara County was the proper domicile for placement of Mr. Karsai.

On October 25, 2011 the matter came on for hearing for the purpose of determining an appropriate placement for the Defendant. The latest report from Liberty Healthcare (manager of the California Conditional Release Program) reflected that Liberty had expanded its search for residences in Santa Barbara County, and the contiguous counties of Ventura and San Luis Obispo. Liberty staff traveled 6793 miles in its 1 year search for properties, and viewed a total of 1261 prospective properties. This search has yielded only one potential property, that belonging to the Defendant's mother.

Ultimately, this court ordered the placement of Mr. Karsai in the residence with his mother. This placement failed to come to fruition due to the extensive amount of publicity, and the harassment of Mr. Karsai's family. Liberty Health Care reported to the court that:

"I regret to inform the court that the property at 1039 Annabelle Street, Santa Maria, CA 93458-7315 has been withdrawn by the family as a placement/residence site for Mr. Karsai. The family has been beset by local media following them and insisting on comments, etc. The family feels this intense attention has been far more than they expected and are concerned for the welfare of younger members of their family and fear of loss of work.

* * * * *

"At this time Liberty has no other prospective location to propose to the court."

By order of December 7, 2011, this court found extraordinary circumstances existed within the meaning of §6608.5(a), justifying a search for "any"

available placements without being constrained to San Luis Obispo or Santa Barbara County.

In its report to the court of February 21, 2012, Liberty Healthcare reported that it had reviewed an additional 230 properties, bringing the total property review to over 1830 sites since first attempting to locate a residence for Mr. Karsai in 2010. In this most recent report, Liberty Healthcare reported that it had looked for placements in eleven other counties, and located two possible relocation sites, both over 350 miles from the county of Mr. Karsai's domicile. Both the people and Mr. Karsai's counsel objected to the two possible placements - the people's objection because of the proximity to one of Mr. Karsai's victims, and both the people and the defense objected on the basis that the placements would provide no support structure for Mr. Karsai. This court agreed that it would be fruitless to pursue those placements.

Sixteen months have passed since this court made its initial order to place Mr. Karsai. Since then Liberty Healthcare estimates that the cost of resources to attempt to locate Mr. Karsai have exceeded \$100,000. Because of the publicity generated by the only suitable previous designated residence, this court was required to enter a gag order regarding any potential placements, such order to remain in place until an actual placement was secured. To date, no suitable placement can be identified.

The statutory scheme for placement of persons to be placed on conditional release from SVP program is simply not working. Mr. Karsai is forbidden to live within 2000 feet of any park or any public or private school by virtue of Penal Code § 3008.5(b).² Additionally Welf. & Inst. Code Section §6608.5(f) prohibits the residential placement of an SVP on conditional release from being within ¼ mile of a public or private K through 12 facility. The effect of this prohibition is presently on appeal before the California Supreme Court.³

It is now this court's experience that private property owners have no interest in renting property to the Department of Health or their subsidiaries or designees, for the purpose of housing a person on conditional release from the Sexually Violent Predators program. Once a community and local government

² (b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

³ People v. Mosley (2011) No. S187965³ - presently pending before the California Supreme Court. One of the issues in Mosley is whether the defendant therein was subject to the residence restrictions of §3003.5(b). The California Attorney general argued that the residence restriction "does not operate as part of the section 290 registration obligation so as to permit prosecution under the registration-enforcement provisions of section 290 for violation of the residency restriction itself." The Attorney General further argues that (1) §3003.5(b) applies to only parolees, and not to all sex offender registrants and (2) that 3003.5(b) "applies only to parolees as a statutory condition of parole and that its sanction extends only to holding the parolee in violation of parole rather than to holding him culpable for a new crime.

officials receive notice of a proposed placement, as in this case, media coverage of the placement of a Sexually Violent Predator within a community strikes fear into the local residents and officials. It has been this court's experience in this case that property owners are simply unwilling to withstand the degree of adverse publicity that will attend such a placement.

This court has examined its inherent powers to determine if the statutory provisions of the SVP law confer the ability to simply compel the housing of Mr. Karsai at some public institution where he is free to come and go. This court has considered whether it is possible to order that the Department of Health purchase property that meets the needs of Mr. Karsai for a residence. (Since the state would be the owner, it could choose who lived in the residence, and make it available to persons subject to SVP community release provisions). This court has considered whether it may order the State of California to make available suitable housing within vacant or closed state facilities, e.g. a state park closed for budgetary reasons. After looking at these alternatives, the court determines that such orders would be outside this court's powers, given that the SVP statutory scheme contemplates that the State Department of Health or its designee makes the decisions regarding proposed placement options.

Liberty Healthcare reports that due to difficulties in placing persons subject to community release under the SVP law, that they have been constrained to options that include placements in tents, and in one case, placement in a mobile home on a pad next to a sheriff's office. It is this court's belief that such placements are not what the legislature has contemplated in providing the method by which persons are to be given an opportunity to succeed in the program.

The public's fear and concern over these placement is warranted. One should not be surprised that swift and strong opposition to a placement of a person labeled as a "Sexually Violent Predator" will come from any affected neighbors, community leaders, and local government officials. When and if a placement is found, these objections may be considered by the court, but the court has discretion to order the placement if it is otherwise suitable. However, it appears that in this case, there is no suitable placement available either in Mr. Karsai's county of domicile, or elsewhere.⁴

⁴ This court is acutely aware of the role of the judiciary vs. the role of the legislature. Occasionally, however, it is necessary to highlight difficulties that attend the implementation of the legislature's intent. This is such a case. The court suggests that the legislature consider a program to purchase and maintain certain "transition placements" for SVP committees that are released subject to community supervision. These community placement facilities would be maintained by the state for the purpose of SVP community release programs. When a person is released to community supervision, a placement could be made to the location that serves the interests of the committee the best. A lengthy search for options would thus be obviated. This option should be proposed and implemented by the State Department of Health. Without

For the above reasons, this court now orders that Mr. Karsai be released in Santa Barbara County as a transient. Further, that Liberty Healthcare design a program to assist Mr. Karsai to obtain shelter, provide program support, and to return for a placement review on April 24, 2012 at 1:30 p.m. in Department 4.

Local authorities shall be notified of this intended placement. Mr. Karsai shall be released on or before April 16, 2012.

The court does not make this order lightly. Placement as a transient does little to serve the interests of public safety. Were there to be a suitable placement for Mr. Karsai within the community, both citizens and law enforcement would know of his location. Law enforcement would be able to more easily monitor Mr. Karsai's movements within the community. Citizens would know where Mr. Karsai was placed, and choose whether to avoid the area if that was their preference.

Moreover, the court understands that selecting a transient placement is manifestly unfair to Mr. Karsai. Because of his transient status, he will be subject to continuing and confusing registration requirements pursuant to Calif. Penal Code §290. He is likely to be the focus of intense law enforcement scrutiny. Because he will not have, at least initially, any semblance of a permanent placement, he will be moving frequently. Nevertheless, he must still adhere to the program that has been designed for him. As a result, it is likely that his potential for program failure is greatly increased.

Nevertheless, the failure to find any suitable placement for Mr. Karsai, the extraordinary length of time and resources expended in locating such a placement, and the lack of any hope of obtaining a future suitable placement, the court is reluctantly is compelled to make the order releasing Mr. Karsai as a transient in Santa Barbara County.

such an option, it is highly likely that the community release provisions of the SVP program will be rendered meaningless.



CALIFORNIA DEPARTMENT OF

Mental Health

Forensic Services - CONILEP Operations
1600 9th Street, Room 250, Sacramento, California 95814
(916) 654-1471

FAX TRANSMISSION COVER SHEET

DATE: March 29, 2012

Number of Pages: 5 including cover sheet

TO: Joyce Dudley, District Attorney
County of Santa Barbara
1112 Santa Barbara Street
Santa Barbara, CA 93101
Office: (805) 568-2300
Fax: (805) 568-2453

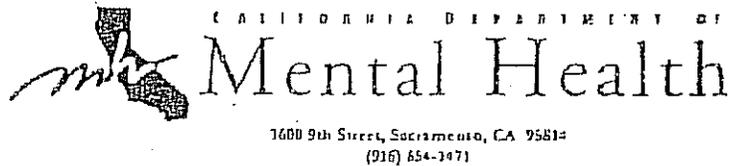
FROM: Andrea Pfitzer
Department of Mental Health, Forensic Services
916-654-2345 Office
916-654-2111 Fax

COMMENTS:

Community Notification Listing for Tibor Bela Karsai. *A hard copy will follow.*

~CONFIDENTIAL~

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March 27, 2012

TO: Joyce Dudley, District Attorney, Santa Barbara County
Bill Brown, Sheriff, Santa Barbara County
Dennis Marshall, County Counsel, Santa Barbara
Camerino Sanchez, Chief of Police, City of Santa Barbara

Dear Sir or Madam:

In compliance with the direction of the California Superior Court in Placer County, this letter will serve as notice of the release of Tibor Karsai, a person civilly committed to the Department of Mental Health (DMH) as a sexually violent predator. Although the DMH did not make a specific placement recommendation to the Superior Court, nor did DMH propose a transient release, at a hearing on March 19, 2012 the Court ordered the DMH to release Mr. Karsai into the community without having a fixed, permanent address. The specifics of the release are as follows:

Name of patient:	Tibor Bela Karsai
Proposed placement address:	Transient Santa Barbara County, CA
Date of commitment:	July 1998
County from which committed:	Placer
County of domicile:	Santa Barbara
Proposed placement date	On or before April 16, 2012
Next court hearing date and location	April 24, 2012 1:30pm Superior Court of California, Placer County 101 Maple Street Department 4 Auburn, CA 95603

000028

Tibor Karsai Community Notification Listing

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The Honorable James Garbolino, Judge
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Tibor Karsai Community Notification Listing
Page 2

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Office of the City Attorney
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EXHIBIT

C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,) APPELLATE NO.:
BY JOYCE DUDLEY, DISTRICT) C070719
ATTORNEY FOR SANTA BARBARA)
COUNTY,)
) SUPERIOR COURT NO.:
) SCV19296
Petitioner,)
vs.)
)
SUPERIOR COURT OF THE STATE OF)
CALIFORNIA, IN AND FOR THE COUNTY)
OF PLACER,)
)
Respondent,)
)
TIBOR KARSAI,)
)
Real Party in Interest.)
)

PETITIONER'S TRAVERSE TO ORDER TO SHOW CAUSE

The Honorable James D. Garbolino, Judge Presiding
Judge of the Superior Court - County of Placer

JOYCE E. DUDLEY
District Attorney
MICHAEL J. CARROZZO (161078)
Deputy District Attorney
1112 Santa Barbara Street
Santa Barbara, California 93101
Telephone: (805) 568-2399
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Attorney for Petitioner

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)	APPELLATE NO.:
BY JOYCE DUDLEY, DISTRICT)	C070719
ATTORNEY FOR SANTA BARBARA)	
COUNTY,)	
)	SUPERIOR COURT NO.:
Petitioner,)	SCV19296
vs.)	
)	
SUPERIOR COURT OF THE STATE OF)	
CALIFORNIA, IN AND FOR THE COUNTY)	
OF PLACER,)	
)	
Respondent,)	
)	
TIBOR KARSAI,)	
)	
Real Party in Interest.)	
_____)	

1.

STATEMENT OF THE CASE

On May 16, 2012, the California Supreme Court granted **Petitioner's** Petition for Review of this Court of Appeal decision dated April 18, 2012. The California Supreme Court further ordered that an Order to Show Cause be issued. The Order to Show Cause stated that Respondent is to "show cause why the relief sought in the petition for writ of mandate should not be granted."

Petitioner contends that the Order to Show Cause now shifts the burden of proof to the Respondent. Petitioner restates and affirms the arguments previously made in the Petition for Writ of Mandate and Reply Brief. Petitioner contends that Welf. & Inst. Code § 6608.5(d), requires a "county agency" to assist in "locating and securing housing." Therefore, the trial court's order of "transient" release was in direct violation of the statutory mandate because no housing is secured. Petitioner requests that the case be remanded to the trial court, so that a legal permanent residence can be located in compliance with the Welfare and Institutions Code.

II.

ISSUE PRESENTED

Whether Welfare and Institutions Code § 6608.5(a) or any other provision of law permits the release of an adjudicated sexually violent predator as a "transient" without any placement being secured by the California Conditional Release Program?

III.

STATEMENT OF FACTS

Tibor Karsai (KARSAI) has been in treatment in the state-run program for nearly twelve years as an adjudicated sexually violent predator (SVP). In October 1974, KARSAI was convicted of raping a 17-year-old female victim at knife-point and was committed to state prison. KARSAI was paroled on March 28, 1979, and

took up residence in San Luis Obispo County. On February 18, 1980, KARSAL was arrested for rape and sexual assault of a minor in Placer County. On June 5, 1980, KARSAL was sentenced to 26 years in state prison.

KARSAL was first committed as a sexually violent predator (SVP) on July 8, 1998. As a result of a series of re-commitment proceedings, KARSAL continued in the SVP program until October 29, 2010, when the court found, pursuant to Welf. & Inst. Code § 6608(d), that KARSAL would "not be a danger to others" in that it was not likely that he would engage in sexually violent criminal behavior if he was under supervision and treatment in the community.

Pursuant to Welf. & Inst. Code § 6608(f), the Placer County Superior Court ordered that the California Conditional Release Program (CONREP) community program director make the necessary placement arrangements and ordered that KARSAL be placed in the community in accordance with the treatment and supervision plan.

On July 22, 2011, the District Attorney of Santa Barbara County objected to a determination of Santa Barbara County as the domicile for purposes of community placement of KARSAL, because he was a resident of San Luis Obispo County at the time of the offense. However, the court determined that Santa Barbara County was the proper domicile for placement.

On September 15, 2011, the court ordered that Liberty Healthcare, a service provider for CONREP, provide an update on placement efforts and requested that

the parties provide the court with briefing on the issues that could constrain a placement in KARSAI's mother's home in Santa Maria, Santa Barbara County.

On October 25, 2011, a hearing was held for the purpose of determining an appropriate placement for KARSAI. A report from Liberty Healthcare documented that Liberty Healthcare had expanded its search for residences in Santa Barbara County, and the contiguous counties of Ventura and San Luis Obispo. This search yielded only one potential property, that belonging to KARSAI's mother, and the court ordered the placement in that residence.

On November 21, 2011, CONREP notified the parties that this placement failed to come to fruition due to the extensive amount of publicity, and the harassment of KARSAI's family. Liberty Healthcare continued the search to obtain a suitable placement location for KARSAI.

On December 7, 2011, the court found extraordinary circumstances existed within the meaning of Welf. & Inst. Code § 6608.5(a), justifying a search for "any" available placements without being constrained to San Luis Obispo or Santa Barbara Counties. Because of the publicity generated regarding the only suitable previously designated residence, the court entered a gag order regarding any potential placements, such order to remain in place until an actual placement was secured.

On February 21, 2012, Liberty Healthcare located two residences; one in Sacramento County, and one in Placer County that were suitable placement for KARSAI. However, the Placer County Superior Court did not approve either location.

Without notice or hearing, on March 27, 2012, the Respondent court ordered that KARSAL be released by April 16, 2012 as a “transient” in Santa Barbara County. On April 2, 2012, Petitioner filed a Writ of Mandate and Stay with the Court of Appeal. On April 4, 2012 the Court of Appeal granted a temporary stay of the release of KARSAL. After submission of an opposition brief, the Court of Appeal vacated the stay and summarily denied Petitioner’s writ.

On May 16, 2012, the California Supreme Court granted Petitioner’s Petition for Review of this Court of Appeal decision dated April 18, 2012. The California Supreme Court further ordered that an Order to Show Cause be issued. On June 14, 2012, Real Party in Interest filed a Return. On June 18, 2012, the Order to Show Cause original with proof of service on the parties was filed.

Petitioner now submits this optional Traverse to the Real Party in Interest’s Return.

IV. ARGUMENT

The decision to release KARSAL, an adjudicated sexually violent predator (SVP), as a transient is the result of a “last resort” that was not necessary and is not legal. The Welfare and Institutions Code provides extensive measures regarding a proposed release of an SVP, including the place where the person committed will be living. (Welf. & Inst. Code § 6609.1) In fact, Welf. & Inst. Code § 6608.5(d), specifically requires that a county agency “shall” provide assistance in “securing housing” for SVP’s “who are about to be released”. Thus, there is no ambiguity in

the statute. The plain language of the statute requires release only when housing is "secured".

The lower court decision did not properly apply the statutory scheme for SVP release. It is not new or unusual for there to be difficulty locating a legal residence for an SVP in the county of domicile. The statute contemplates this issue and provides a remedy which is a determination that "extraordinary circumstances" exists. (Welf. & Inst. Code § 6608.5) This determination then allows the SVP to be placed in any county in the state regardless of domicile. Therefore, the statute is clear and there is no set of circumstances beyond "extraordinary circumstances" that allows for "transient" release. In other words, this case is being handled under the "extraordinary circumstances" exception to the normal rules. The parties involved are required to work within those rules and locate suitable permanent residence for KARSAL. The trial court had no jurisdiction to go outside the "extraordinary circumstances" rules provided in Welf. & Inst. Code § 6608.5 and create a new type of "transient" release. The Real Party in Interest reliance on *People v. Jordan* (1884) 65 Cal. 644, which is over 125 years old, is misplaced. The statute in this case is highly detailed and provides a clear detailed model for the adjudication, confinement and release of SVP's.

The Placer Court Superior Court's determination that there was no suitable placement available either in KARSAL's county of domicile, or elsewhere, which necessitates release as a transient is not allowed by law. The lower court made the decision without any legal basis or even a hearing on merits of a transient release.

While Petitioner contends that the lower court erred in determining that Santa Barbara County was the appropriate jurisdiction for release of KARSAI, Petitioner acknowledges that KARSAI will be released.

Therefore, the issue at hand is whether a transient release comports with Welfare & Institutions Code § 6600, et. al. and Penal Code § 3003.5.

The trial court's decision to release KARSAI as a transient does not obviate the fact that no suitable location exists in Santa Barbara County. In fact, the decision to release KARSAI without a permanent residence puts the community at risk and puts KARSAI in a position where he is likely to fail.

The lower court acknowledged the danger of such an order as follows:

Placement as a transient does little to serve the interests of public safety. Were there to be a suitable placement for Mr. Karsai within the community, both citizens and law enforcement would know of his location. Law enforcement would be able to more easily monitor Mr. Karsai's movements within the community. Citizens would know where Mr. Karsai was placed, and choose whether to avoid the area if that was their preference... As a result, it is likely that his potential for program failure is greatly increased. (Placer County Superior Court Decision p. 5)

Liberty Healthcare locates placements for SVP's on a regular basis, and there is no reason to conclude that a location is unavailable in this case. Liberty Healthcare has not declared in any way whatsoever that there is no placement available. In fact, as recently as February 21, 2012, Liberty Healthcare located two residences; one in Sacramento County, and one in Placer County, that were suitable placement for KARSAI.

Thus, Petitioner submits that it was unreasonable to end the search for placement on March 29, 2012, considering two locations were identified approximately a month before the Placer County trial court's decision. The point is that Liberty Healthcare has not exhausted all of its resources, and reasonable efforts can still be made to locate a residence that is in compliance with state and local laws.

The fact remains that a legal permanent residence is not available in Santa Barbara County. Therefore, more counties and more locations should have been considered by Liberty Healthcare, KARSAL and the trial court.

Most importantly, there is no statutory authority to allow KARSAL to be released as a transient. The Welfare and Institutions Code goes into great detail regarding SVP commitment and release. However, there is no provision whatsoever that allows an SVP to be released as a transient. The limitations that have been placed on where a sex offender may reside are there for a reason. The Welfare and Institutions Code contemplates that a prior sex offender, who can safely be placed in an unlocked community program, will be placed in such a program within the time constraints specified in the statute. The lower court's decision to essentially "give up" is not in compliance with the statute and puts the community in danger.

The correct procedure is to continue attempting to obtain a suitable residence. In fact, there were at least two residences that fit within the statute, but the lower court found that "placements would provide no support structure." It is

inconceivable that release as a "transient" provides a better support structure than the locations rejected by the lower court.

Moreover, on December 1, 2011, the trial court found extraordinary circumstances and ordered that Liberty Healthcare seek placement for KARSAL in any county in California, rather than only the county of domicile. Only four months later, on March 29, 2012, the lower court determined there was no suitable placement available either in KARSAL's county of domicile or elsewhere, and decided to release KARSAL as a transient. Instead of continuing the search for a placement, the lower court made the decision to release KARSAL into the community as a transient, which is not appropriate. As opposing counsel concedes, there is no provision that allows an SVP to be released as a transient. KARSAL asserted that Welf. & Inst. Code § 6609(c) implies transient release. Petitioner contends that the Court of Appeal's acceptance of this proposal is incorrect.

The plain language of the statute leaves no implication that transient release is contemplated. Welf. & Inst. Code § 6609(c), merely expands the geographic region from which comments may be considered. However, a clear indication that transient release is not authorized under the statute is provided in Welf. & Inst. Code § 6608.5(a). The provisions of Welf. & Inst. Code § 6608.5(a), authorize the trial court to place an SVP in a residence outside of the county of domicile based on "extraordinary circumstances." Specifically, Welf. & Inst. Code § 6608.5(d), requires that a "county agency" provide assistance in "securing housing." Thus, the language of the statute is clear and unambiguous. The plain language of the statute

requires release only when housing is “secured”. If transient release were authorized under the statute, there would be no need to consider release into other counties as specifically authorized by Welf. & Inst. Code § 6608.5.

Therefore, Welf. & Inst. Code § 6608.5 sets forth the only procedure available if an SVP cannot be released into a county of domicile. The procedure is set forth in the statute and does not include transient release directly, or indirectly. Moreover, as an anecdotal resource, according to Witkin’s California Law treatise, “[t]he county of domicile must designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons to be conditionally released.” (3 Witkin, Cal. Crim. Law 3d (2000) Punishment, § 199, p. 275 – emphasis added)

There is case authority which supports Petitioner’s position that the Court of Appeal apparently did not carefully consider. In *People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, the court held that an SVP cannot be released under such conditions as in this case:

We conclude, however, that in order to recommit George as an SVP, it is sufficient to prove that public safety requires either his confinement in a secure facility or supervised community placement. We shall therefore reverse the dismissal of the petition and remand for trial on the issue so defined. (*People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, 188)

In *People v. Superior Court (George)*, *ibid*, the court not only refused to release the SVP because no permanent residence was located, but also allowed the prosecutor to file a new petition. The new petition would have allowed the

prosecution to present new evidence which could have resulted in the previous authorized conditional release to be rescinded for an additional period of time. Petitioner contends the holding in *People v. Superior Court (George)* is decidedly on point and requires that the decision in the present case be countermanded.

If there is no such program that can accommodate George, remedial action may be necessary both to obtain compliance with the statute and to avoid potential constitutional infirmity. However, despite the delay that has developed in placing George in such a program, there is as yet no basis to assume that he cannot and will not be placed in such a program...Although we recognize the unfairness to George in failing to place him in a noncustodial program as the statute requires, we do not believe that the remedy is to abrogate the protective scheme of the SVPA by discharging him unconditionally if the evidence proves that without supervision he will remain a danger to the public. (*People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, 198. – emphasis added)

Release as a transient also provides an additional problem relating to Penal Code §290 registration. Due to his contemplated “transient status,” it will be difficult for KARSAL to register pursuant to Penal Code § 290, as he will not have any semblance of a permanent placement and he will be moving frequently.

Therefore, the release of KARSAL into Santa Barbara County as a transient was an abuse of discretion. The release into Santa Barbara County without a residence is not appropriate and not authorized under the Welfare & Institutions Code. The Placer County Superior Court’s decision without notice, in violation of the requirements set by statute, was unlawful and the appropriate remedy is for a writ of mandate to issue. Petitioner requests that KARSAL not be released until a

suitable placement location that conforms to the Welfare and Institutions Code is determined.

V.

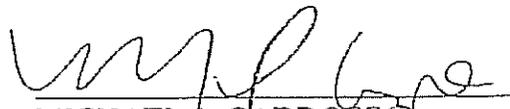
CONCLUSION

The release of KARSAL into Santa Barbara County without a residence is not appropriate and not authorized under the Welfare & Institutions Code. The California Supreme Court concluded by granting the Petition for Review and ordering that the Order to Show Cause be issued, that Respondent has the burden of proof to that the lower court decision was correct. However, Petitioner has established that the lower court's decision was unlawful, and the appropriate remedy is for a writ of mandamus to issue, mandating the lower court not to release KARSAL into Santa Barbara County as a "transient." Petitioner requests that KARSAL not be released until Liberty Healthcare locates a residence that conforms to the Welfare & Institutions Code and the Penal Code.

DATED: July 9, 2012

Respectfully submitted,

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